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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/772,011   | 01/29/2001  | Nan Feng             | JP919990263-US1     | 9243             |
| 7590   | 06/10/2005  |                      | EXAMINER            |                  |
| Anne Vachon Dougherty<br>3173 Cedar Road<br>Yorktown Heights, NY 10598 |             |                      | CHOWDHURY, AZIZUL Q |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2145                |                  |

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |              |
|------------------------------|-----------------|--------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |
|                              | 09/772,011      | FENG ET AL.  |
| Examiner                     | Art Unit        |              |
| Azizul Choudhury             | 2145            |              |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 March 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 January 2001 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_\_

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) 5) Notice of Informal Patent Application (PTO-152)  
Paper No(s)/Mail Date. \_\_\_\_\_ 6) Other: \_\_\_\_\_



***Detailed Office Action***

This office action is in response to the correspondence received on March 1, 2005.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballard (US Pat No: 6,078,960).

1. With regards to claims 1, 11 and 20, Ballard teaches a method (a method is able to be an apparatus and a program) for balancing load among a plurality of mirror servers, wherein a user may select and get access to any one of said plurality of mirror servers within an identical web page, said method comprising the steps of:
  - a. When said web page is access by a client, transmitting not only said web page but also a predetermined script to said client;
  - b. Automatically executing said script at said client so as to respectively create connections with each of said plurality of mirror servers and measure respective response times;
  - c. Selecting a mirror server having the shortest response time for the user to access

(Ballad teaches a design for a client side load balancing (column 1, lines 43-50, Ballard). Clients receive a load balance list from the server they first access and the clients execute selection functions using the load balance list (equivalent to the claimed script) to determine and select the server with the least load). There are numerous servers the clients are able to select from, which have the same data amongst them hence, the servers are mirror servers (column 1, lines 51-52, Ballad)).

2. With regards to claims 2 and 12, Ballard teaches the method (a method is able to be an apparatus) wherein said predetermined script is transmitted together with said web page to said client (Servers are able to perform various tasks, serving as web servers is one such ability. The servers of Ballard's design are able to work in networks such as the Internet and hence means are present for the servers to serve as web servers (column 5, lines 12-41, Ballard). In addition, clients receive a load balance list (script) from the server they first access (column 1, lines 43-50, Ballard). Hence, means for the claimed step are present within Ballard's design).
3. With regards to claim 3, Ballard teaches the method wherein said automatically executing script comprises the steps of:
  - a. Calling a predetermined engine by said client; and

- b. Executing said script by said engine, comprising creating connections with each of said plurality of mirror servers and measuring respective response times (The load balance list (script) of Ballard's design is executed automatically by the client when it is received (column 1, lines 43-50, Ballard). It is inherent that an engine is present since the list is executed).
4. With regards to claims 4 and 13, Ballard teaches the method (a method is able to be an apparatus) wherein said executing said script is performed in a multi-thread manner for said plurality of mirror servers (The load balance list (script) of Ballard's design is executed automatically by the client when it is received (column 1, lines 43-50, Ballard). Processors execute processes in a multithreaded manner and the clients and servers of Ballard's design must use processors).
5. With regards to claims 5 and 14, Ballard teaches the method (a method is able to be an apparatus) further comprising sending the client information to the mirror servers being connected (Data within computers of a network are accessible by other computers within the network (granted they have access permission). The same applies to Ballard's design (column 4, lines 15-17, Ballard)).
6. With regards to claims 6 and 15, Ballard teaches the method (a method is able to be an apparatus) wherein said client information includes at least one of IP

address, domain name, platform name, platform version, and browser type of said client (In a network, when a client accesses a server, it sends data packets with information about itself. This is done to allow server to properly serve a client request by sending data in a format usable by the client. This is particularly true when a client uses a web browser to access a web server. The browser sends information such as IP information, platform information and the others claimed to the server so that the server is able to serve the client properly. Such means are present within Ballard's design since the design allows for use within an Internet setting (column 5, lines 12-41, Ballard)).

7. With regards to claims 7 and 16, Ballard teaches the method (a method is able to be an apparatus) wherein said connections are created through proxies (Web devices that make connections (such as networked clients and servers) are forms of proxies. Ballard's design makes use of networked clients and servers).
  
8. With regards to claims 8 and 17, Ballard teaches the method (a method is able to be an apparatus) wherein said script can be re-started by said user (The load balance list is updatable (column 2, lines 5-17, Ballard). When the client accesses the server, the list is re-obtained. The user controls the client and makes the client make its request. Hence, the claimed feature exists within Ballard's design).

9. With regards to claims 9 and 18, Ballard teaches the method (a method is able to be an apparatus) further comprising comparing respective response times of said plurality of mirror servers (Ballard's design has the client determine which server to access based on loads (column 1, lines 43-50, Ballard). Response time data is comprised within load data).
  
10. With regards to claims 10 and 19, Ballard teaches the method (a method is able to be an apparatus) further comprising the steps of:
  - a. Notifying said user of the mirror server having the shortest response time;
  - b. Receiving user input selecting one of said mirror servers as the selected mirror server; and
  - c. Establishing access for the user to the mirror server(Ballard's design has the client determine which server to connect to based on load levels (column 1, lines 43-50, Ballard). The server sends the load balance list to the clients).

#### ***Response to Remarks***

The remarks and amendments filed in March 1, 2005 have been evaluated but are not deemed fully persuasive. Within the remarks, the applicant's representative focuses on two primary issues. The first issue involves the downloading of scripts and the second issue involves response times being used. Explanations on why these issues are not deemed fully persuasive are listed below.

With regards to the issue of downloading scripts, the applicant's representative is pointed towards the load balance lists received by the client computers (column 1, lines 44-50, Ballard). The load balance lists are downloaded by the client computers and hence is "dynamically downloaded" to the client. The client computers execute functions using the list information to select which server to access. The list is downloaded and used in determining which server to access. The list is therefore viewed as being equivalent to the claimed script.

With regards to the issue of measuring response time, the applicant's representative is directed to the server selection function (column 1, lines 51-58, Ballard). The disclosure details how time and access are relevant traits in server selection. In addition, it is inherent that in load balancing designs that response time is considered. The overall goal in load balancing time is to minimize the delay of a response from a server. For such a goal to be reached, response time inherently must be a consideration.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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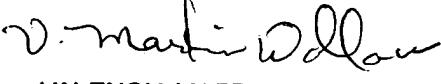
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (571) 272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AC

  
VALENCIA MARTIN-WALLACE  
SUPERVISORY PATENT EXAMINER